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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,609	01/22/2002	Micheal Norman Collins	0119/0004	6548
21395	7590	03/31/2006	EXAMINER	
LOUIS WOO LAW OFFICE OF LOUIS WOO 717 NORTH FAYETTE STREET ALEXANDRIA, VA 22314			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,609

Applicant(s)

COLLINS, MICHEAL NORMAN

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/12/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/30/05 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,979,445 to Neame et al.

Neame teaches a laryngeal mask airway including a tubular portion **1** and a mask portion **13** at a patient end of the tubular portion having sealing cuff **24** of generally oval shape defining an opening within a center thereof and adapted to seal with patient tissue around the laryngeal inlet, the mask portion defining a recess extending from the opening to the patient end of the tubular portion without any obstructing structure such that the entire recess is available for receiving patient tissue, (as seen in Fig. 2, aperture **26** is large enough to allow a user's tissue, such as a tongue

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or finger, to have access to the entire recess, characterized in that the patient end of the tubular portion is located above and to the rear of the side of the opening such as to space it away from the epiglottis (the device of Neame is fully capable of performing said function).

Neame also teaches the patient end of the tubular portion located substantially midway across the width of the rear side of the sealing cuff; wherein the tubular portion is a separate tube bonded to the mask portion (see Fig. 1); wherein a longitudinal center line along the internal surface of the roof of the recess is substantially straight (see Fig. 1); the part of mask portion **11** that is adjacent tube **25**).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-8 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Neame et al.

Neame teaches all the limitations of the recited claims, as applied to claim 1 above, but Neame does not specifically teach any measurements for the internal diameter of the tubular portion and the height of the mask portion. However, as seen in Fig. 1, it can be ascertained that the internal diameter of the internal diameter is 7 mm and that a top of the mask portion where the tubular portion connects to is about 23 mm. Though the drawings are not disclosed to be drawn to scale, one of ordinary skill

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in the art at the time the invention was made would have found it obvious to use the dimensions shown in the figure to construct the mask of Neame since the drawings are representative of Neame's invention. As such, having a tubular portion with an internal diameter of 7 mm and the mask portion having a height of 23 mm would result in a ratio of 3.2

Neame is also silent with regards to the volume of the recess. However, since one of ordinary skill in the art can ascertain the internal diameter of the tubular portion and a height of the mask portion to be within the applicant's range, it would have been obvious to one of ordinary skill in the art to have the ratio of the internal diameter of the tubular portion cubed to the volume of the recess to be between 50 and 68 since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

6. Applicant's arguments with respect to claims 1-8 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON
PRIMARY EXAMINER